

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

**DONALD D. MACFARLANE**, et al.,

Plaintiffs,

v.

**STATE OF OREGON DEPARTMENT  
OF HUMAN SERVICES**, et al.,

Defendants.

No. 3:17-CV-00032-PK

OPINION AND ORDER

**MOSMAN, J.,**

On March 14, 2018, Magistrate Judge Paul Papak issued his Findings and Recommendation (F&R) [32], recommending that Defendant State of Oregon Department of Human Services's ("DHS") Motion to Dismiss for Lack of Prosecution [25] should be DENIED. Judge Papak also recommended that I order that within 11 days of this Opinion and Order, Plaintiff Donald MacFarlane must provide DHS a date he will be available for deposition; that date must be within 60 days of this Opinion and Order and can take place at DHS's counsel's office, by telephone, or by videoconference. Judge Papak also recommended I warn Mr. MacFarlane that if he fails to cooperate with DHS's effort to depose him, then his case may be dismissed for failure to prosecute. No party objected.

**DISCUSSION**


The magistrate judge makes only recommendations to the court, to which any party may file written objections. The court is not bound by the recommendations of the magistrate judge, but retains responsibility for making the final determination. The court is generally required to

make a de novo determination regarding those portions of the report or specified findings or recommendation as to which an objection is made. 28 U.S.C. § 636(b)(1)(C). However, the court is not required to review, de novo or under any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the F&R to which no objections are addressed. *See Thomas v. Arn*, 474 U.S. 140, 149 (1985); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003). While the level of scrutiny under which I am required to review the F&R depends on whether or not objections have been filed, in either case, I am free to accept, reject, or modify any part of the F&R. 28 U.S.C. § 636(b)(1)(C).

Upon review, I agree with Judge Papak's recommendation and I ADOPT the F&R [32] as my own opinion. DHS's Motion to Dismiss for Lack of Prosecution [25] is DENIED. I ORDER that within 11 days of this Opinion and Order, Mr. MacFarlane must give DHS a date he will be available for deposition. That date must be within 60 days of this Opinion and Order. The deposition may take place at DHS's counsel's office, by telephone, or by videoconference. If Mr. MacFarlane fails to cooperate with DHS's effort to depose him, then his case may be dismissed for failure to prosecute.

IT IS SO ORDERED.

DATED this 6<sup>th</sup> day of April, 2018.

  
MICHAEL W. MOSMAN  
Chief United States District Judge